

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Group Art Unit: 3711

Ron M. Bean

Filed: June 10, 2004

Application No: 10/709,975

Attorney Docket: 04B1727

For: APPARATUS WITH BELLOWS
FOR CALLING GAME

Examiner: U. Cegielnik

Commissioner for Patents
P. O. Box 1450
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APPLICANT'S BRIEF ON APPEAL TO THE BOARD



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REAL PARTY IN INTEREST	2
RELATED APPEALS AND INTERFERENCES	2
STATUS OF CLAIMS	2
STATUS OF AMENDMENTS	3
SUMMARY OF CLAIMED SUBJECT MATTER	3
GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL	8
ARGUMENT	8
CLAIMS APPENDIX	13
EVIDENCE APPENDIX	18
RELATED PROCEEDINGS APPENDIX	20

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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APPLICANT'S BRIEF ON APPEAL TO THE BOARD

This is an appeal from the final rejection of the Examiner dated May 18, 2007, rejecting claims 11-17 and 21-28 in the case. This Brief is accompanied by the requisite fee set forth in §1.17(c).

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee, Hunter's Specialties, Inc.

RELATED APPEALS AND INTERFERENCES

The application on appeal is not subject to, or an element in, any other appeal or interference proceeding within the U.S. Patent and Trademark Office.

STATUS OF CLAIMS

Claims 11-17 and 21-28 are pending; all claims have been finally rejected, and all claims are on appeal.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

STATUS OF AMENDMENTS

No amendments to the claims or the specification have been filed subsequent to the final rejection dated May 18, 2007.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Without limiting the claims on appeal, the invention of Claim 11 is summarized below:

Claim 11 A game call apparatus, comprising:

a housing; (#104 Figs. 2 and 3)

a sounding board (#202 Figs. 2 and 3) coupled to the housing, the sounding board defining a main air channel;

a reed (#204 Figs. 2 and 3) coupled to the sounding board adjacent the main air channel to produce sounds when air passes through the main air channel;

a pressure point structure (#112 Figs. 2 and 3) disposed in the housing, the pressure point structure engaging the reed at a reed contact location, (see Fig. 3 where the detents 214 and 216 contact the reed 204) the pressure point structure urging the

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

reed toward the sounding board at the reed contact location, the pressure point structure being movable relative to the reed, as air is forced across the reed to change a free end length of said reed (see Fig. 3 to see that the free end length of the reed is that portion of the reed 204 between detent 216 and the tip of the reed. Note if the pressure point structure is moved downward, detent 216 loses contact with the sounding board and the reed, thereby causing the free end length of the reed to now extend from the tip of the reed back to detent 214), which is free for sound producing vibrations; and (see paragraph 0024 in specification as filed for a discussion of the movement.)

a rigid cylindrical member (#230 Fig. 2) configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length. NOTE: the variable gap between the top of screw 230 and the pressure point structure 112 simultaneously allows for variability of the free end length AND limits the range of the variability. This is a key aspect of the invention that was not considered by the Examiner.

The invention of claim 21 is summarized as follows:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

Claim 21 A game call apparatus, comprising:

a housing, (Figs. 2 and 3 #104) having a top end and a bottom end;

a sounding board (Figs. 2 and 3 #202) coupled to the housing, the sounding board defining, at least in part, a main air channel;

a reed (Figs. 2 and 3 #204) coupled to the sounding board adjacent the main air channel to produce sounds when air passes through the main air channel;

a pressure point structure (Figs. 2 and 3 #112) disposed in the housing, the pressure point structure configured for engaging the reed at a reed contact location, the pressure point structure urging the reed toward the sounding board at the reed contact location, the pressure point structure being movable relative to the reed, as air is forced across the reed to change a free end length of said reed which is free for sound producing vibrations; and

a rigid cylindrical member (Figs. 2 and 3 #230) configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length;

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

said housing further comprising a bellows (Fig. 3 #102) disposed at the top end and configured so that compression of the bellows in a direction parallel with a direction from an upper central portion of the top end to a lower central portion of the bottom end causes air to flow through the main air channel and sound to be generated, further compression of the bellows is configured to cause a manipulation of the pressure point structure to cause the reed contact location to change, thereby changing the free end length of said reed (see paragraph 0024).

Claim 28 A game call apparatus comprising:

an object (104 Figs. 2 and 3) having a top end and a bottom end;

a sounding board (202 Figs. 2 and 3) coupled to the object, the sounding board defining, at least in part, a main air channel having a main air channel axis;

a reed (204 Figs. 2 and 3) coupled to the sounding board adjacent the main air channel to produce sounds when air passes through the main air channel along the main air channel axis;

a pressure point structure (112 Figs. 2 and 3) disposed within the object, the pressure point structure configured for engaging the reed at a reed contact location, the pressure point structure holding the reed against the sounding board at the reed contact location, the pressure point structure being movable relative to the reed, as air

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

is forced across the reed to change a free end length of said reed which is free for sound producing vibrations; and

a rigid cylindrical member (230 Fig. 3) configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length;

said object comprising a bellows (102 Fig. 3) disposed at the top end and configured so that compression of the bellows in a compression direction which is parallel with a direction from an upper central portion of the top end to a lower central portion of the bottom end causes air to flow through the main air channel and sound to be generated, further compression of the bellows is configured to cause a manipulation of the pressure point structure to cause the reed contact location to change, thereby changing the free end length of said reed.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL

Whether claim 11 has been properly rejected under 35 U.S.C. §102 (b) as being anticipated by the Bicocchi reference.

Whether claim 21 has been properly rejected under 35 U.S.C. §103 as being unpatentable over Bicocchi in view of Primos.

Whether claim 28 has been properly rejected under 35 U.S.C. §103 as being unpatentable over Bicocchi in view of Primos

ARGUMENT

The Appellant contends the following with respect to each ground of rejection listed above.

WHETHER CLAIM 11 IS PROPERLY REJECTED AS

BEING ANTICIPATED BY THE BICOCCHI REFERENCE

Independent claim 11, as presented on appeal, is easily distinguishable from the Bicocchi reference. Claim 11 includes, among others, the following limitations:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

“a rigid cylindrical member configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length..” (emphasis added).

The Appellant believes that the cited reference fails to teach the above characterized limitation.

First of all, the Examiner fails to even allege that the Biococchi reference has a rigid member which “simultaneously allows for some variability of said free end length AND limits a range of variability. “ Despite that the applicant amended the claim to include the additional limitation of simultaneously allows for some variability of said free end length, the Examiner merely cut and pasted the old rejection from the earlier office action into the new final office action. There was not even a discussion of this new limitation. The Examiner responded to the Applicant as if the Applicant had made no amendment to the claims. This failure to consider each and every limitation is a failure to consider the claim as a whole, as is required for both anticipation and obviousness rejections. More importantly, there is no teaching in Bicocchi to this notion of **simultaneously allowing some and limiting the**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

variability of the free end of the reed. The Bicocchi reference is **adjustable**, but at any adjustment configuration, there is NO variability in the free end length, (not as claimed simultaneously allowing for some variability). Bicocchi teaches an **adjustable fixed free length**, not the novel notion of the present invention of an **adjustable limit placed upon the variable free end length of the reed**; i.e., simultaneously allowing for some variability and limiting the range of variability.

In summary, the Bicocchi reference does not teach or suggest even the desirability of modifying the prior art to include:

“a rigid cylindrical member configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for SOME variability of said free end length and limits a range of variability of said free end length..”

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

WHETHER CLAIM 21 IS PROPERLY REJECTED AS BEING
OBVIOUS OVER THE BICOCCHI AND PRIMOS REFERENCES

Claim 21 includes the similar key limitations as in claim 11 which are not taught by the cited references. The Primos reference is added, but it is cited for teaching a bellows and is not cited as teaching the above-described shortcoming in the Examiner's rejection based upon the Bicocchi reference. The above arguments for the failure of the 102 rejection are repeated here.

The Appellant believes that the Examiner has not carefully considered each and every limitation of the claim. As such, the Examiner is failing to consider the claim as a whole, as is required by 35 U.S.C. §103.

These cited references clearly do NOT establish a *prima facie* case of obviousness with respect to claim 21.

WHETHER CLAIM 28 IS PROPERLY REJECTED AS BEING
OBVIOUS OVER THE BICOCCHI AND PRIMOS REFERENCES

Claim 28 also includes the similar key limitations as in claims 11 and 21 which are not taught by the cited references. As with claim 21, here Primos is cited for teaching a bellows and is not cited as teaching the above-described shortcoming in the

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

Examiner's rejection based upon the Bicocchi reference. The above arguments for the failure of the 102 rejection are again repeated here.

The Appellant believes that the Examiner has not carefully considered each and every limitation of the claim. As such, the Examiner is failing to consider the claim as a whole, as is required by 35 U.S.C. §103.

These cited references clearly do NOT establish a *prima facie* case of obviousness with respect to claim 28.

CONCLUSION

The Appellant respectfully submits that the Examiner has failed to consider each and every one of the claim limitations and, therefore, requests that the rejection of all of the claims, including independent claims 11, 21 and 28, be reversed and that the application be allowed.

10-4-07
Date

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

CLAIMS APPENDIX

Claims 1-10 (cancelled)

Claim 11 A game call apparatus, comprising:

a housing;

a sounding board coupled to the housing, the sounding board defining a main air channel;

a reed coupled to the sounding board adjacent the main air channel to produce sounds when air passes through the main air channel;

a pressure point structure disposed in the housing, the pressure point structure engaging the reed at a reed contact location, the pressure point structure urging the reed toward the sounding board at the reed contact location, the pressure point structure being movable relative to the reed, as air is forced across the reed to change a free end length of said reed which is free for sound producing vibrations; and

a rigid cylindrical member configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

Claim 12 A game call apparatus according to claim 11 wherein the reed contact location comprises two locations.

Claim 13 A game call apparatus according to claim 11 wherein said housing has a top side and a bottom side and further comprising a bellows disposed at said top side.

Claim 14 A game call apparatus according to claim 13 wherein the bellows has a smooth continuous top portion.

Claim 15 A game call apparatus according to claim 13 wherein said housing has a top side and a bottom side wherein the rigid cylindrical member is centrally disposed at said bottom side.

Claim 16 A game call apparatus according to claim 15 wherein the housing further comprises a protuberance, at said bottom side; said protuberances being configured to receive therein a cylindrical member with a spiraled groove portion therein.

Claim 17 A game call apparatus according to claim 13 further comprising a retainer plate for cooperation with said bellows.

Claim 18 -20 (cancelled)

Claim 21 A game call apparatus, comprising:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

a housing, having a top end and a bottom end;

a sounding board coupled to the housing, the sounding board defining, at least in part, a main air channel;

a reed coupled to the sounding board adjacent the main air channel to produce sounds when air passes through the main air channel;

a pressure point structure disposed in the housing, the pressure point structure configured for engaging the reed at a reed contact location, the pressure point structure urging the reed toward the sounding board at the reed contact location, the pressure point structure being movable relative to the reed, as air is forced across the reed to change a free end length of said reed which is free for sound producing vibrations; and

a rigid cylindrical member configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length;

said housing further comprising a bellows disposed at the top end and configured so that compression of the bellows in a direction parallel with a direction

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

from an upper central portion of the top end to a lower central portion of the bottom end causes air to flow through the main air channel and sound to be generated, further compression of the bellows is configured to cause a manipulation of the pressure point structure to cause the reed contact location to change, thereby changing the free end length of said reed.

Claim 22 A game call of claim 21 wherein the pressure point structure is configured to cause a non-continuous movement in the reed contact location when a generally continuous movement is imparted to the pressure point structure.

Claim 23 A game call of claim 21 wherein a generally continuous depression of the bellows results in discontinuous change in free end length of the reed.

Claim 24 A game call of claim 21 wherein a generally continuous downward depression of the bellows results first in no change in the free end length of the reed, and then a rapid change in the free end length of reed, where the rapid change of free end length occurs between two predetermined free end lengths associated with a pair of predetermined detents.

Claim 25 A game call of claim 21 wherein the main air channel is perpendicular to a direction of movement in a top portion of the pressure point structure.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

Claim 26 A game call of claim 21 wherein the pressure point structure contacts the reed at only a central point on the reed.

Claim 27 A game call of claim 21 wherein a generally continuous downward force applied via the bellows to a top portion of the pressure point structure results in no change in free end length of the reed, but does result in flexing of the pressure point structure, which reduces the magnitude of force applied by the pressure point structure to the reed.

Claim 28 A game call apparatus comprising:

an object having a top end and a bottom end;

a sounding board coupled to the object, the sounding board defining, at least in part, a main air channel having a main air channel axis;

a reed coupled to the sounding board adjacent the main air channel to produce sounds when air passes through the main air channel along the main air channel axis;

a pressure point structure disposed within the object, the pressure point structure configured for engaging the reed at a reed contact location, the pressure point structure holding the reed against the sounding board at the reed contact location, the pressure point structure being movable relative to the reed, as air is

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

forced across the reed to change a free end length of said reed which is free for sound producing vibrations; and

a rigid cylindrical member configured with a spiraled groove portion therein, so that rotation of said rigid cylindrical member results in relative longitudinal movement with respect to said housing, which longitudinal movement simultaneously allows for some variability of said free end length and limits a range of variability of said free end length;

said object comprising a bellows disposed at the top end and configured so that compression of the bellows in a compression direction which is parallel with a direction from an upper central portion of the top end to a lower central portion of the bottom end causes air to flow through the main air channel and sound to be generated, further compression of the bellows is configured to cause a manipulation of the pressure point structure to cause the reed contact location to change, thereby changing the free end length of said reed.

EVIDENCE APPENDIX

None

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

RELATED PROCEEDINGS APPENDIX

There are no related proceedings associated with this appeal.